IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1994 OF 2006
IN
SUM. JUDGMENT NO.196 OF 2006
IN
SUM. SUIT NO.3389 OF 2003

Swati Narendra Sangani ...Plaintiff

Versus

S. Kumars Online Ltd. ...Defendants

Mr. K.M. Sangani, Advocate, for Plaintiff.

Mr. M.N. Ramalingaiah, Advocate, for Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 24TH AUGUST, 2006

P.C.

1. The Defendants in this Notice of Motion seeks that the suit be referred to arbitration.

2. The suit is filed to recover a sum of about Rs.3,45,000/- together with interest on the sum of Rs.2,00,000/- @ 24% p.a. The claim arises under and in respect of a franchise agreement dated 25th July, 2000. Clause 19 of the agreement reads as under :-

"19. DISPUTE RESOLUTION

19.1 Any dispute arising between the

parties under this Agreement, regarding the interpretation of the Agreement or otherwise shall be referred for resolution to an Arbitrator appointed in this behalf by the Company, and the Award made by such Arbitrator shall be binding on the parties. The Arbitration shall be carried out in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The language of the arbitration shall be English and the venue of the arbitration shall be Mumbai.

19.2 In case of any complaint or dispute with regard to the internet service provided by the Company, such complaint or dispute shall be a matter between the company and the Franchisee only. The Government, Department of Telecommunications, Mahanagar Telephone Nigam Limited, Videsh Sanchar Nigam Limited or any other service provider licensing the connectable systems shall not be a party to any such complaint / dispute."

3. The amount payable under the agreement itself is dispute as the quantification thereof is disputed. This is not a case where there is no dispute

whatsoever. The Defendants are entitled to the order prayed for in view of section 45 of the Arbitration and Conciliation Act, 1996.

4. In the circumstances, the Notice of Motion is absolute in terms of prayer (a).